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INTERNATIONAL SOCIETY for LABOR and SOCIAL SECURITY LAW

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Notes from the Chair

By **Steve Befort**

I recently returned from attending the American Regional Congress in Guayaquil, Ecuador. It was a fascinating and informative experience. The three principal themes of the Congress focused on issues of employment discrimination, collective bargaining, and the legal status of self-employed workers. Additional sessions featured discussions on the impact of international human rights, public and private pensions, social protections related to work, and significant legal issues concerning the Ecuadorian workplace. While there certainly were reported differences among the many national legal regimes, I was struck by the universality of issues such as discrimination, employee misclassification, and pension under-funding.

While the U.S. physical presence at the Congress was small, our impact was quite noticeable. **Janice Bellace** served as Presidenta de la Sesión for the plenary session regarding collective representation. Each of the rapporteurs of the three themes credited the national reports submitted by the U.S. Branch and included the substance of those reports (prepared by **Steve Willborn**, **Barbara Fick**, and myself) in their remarks. Indeed, Steve Willborn's paper on Employment Discrimination was one of only three national reports included in the published booklet prepared for the Congress.

Of course, the Congress was not without its challenges. Virtually all of the presentations were in Spanish which, for me, necessitated the use of headphones providing translation. The good news, though, is that two of the next major conferences will occur in English speaking countries. Dublin, Ireland, will host the European Congress in September 2014, while Cape Town, South Africa, will be the site of next World Congress in September 2015. I met Lauren Tennyson, an advance scout for the Dublin Congress, in Guayaquil. She assured me that the Dublin Congress would offer great

presentations, a wonderful setting, and a fun after-session pub life. Please start thinking about participating and taking advantage of these future opportunities.

New Web Site for the Society

Through the efforts of Jeffrey Sack and his colleagues at Lancaster House in Canada, and of our Past Chair and current Treasurer **Steven Willborn**, the international office of the Society has adopted a new web site: www.islssl.org. Please visit it and send Steve any suggestions or items of interest you may have. (Note: this web site is for the international organization. The U.S. Branch's web site, hosted at Steve's school, continues to be at the address on the Bulletin's banner head.)

Philip Miscimarra-New NLRB Member

Philip Miscimarra, a long time member of the US Branch, was confirmed by the Senate on July 30th as a new member of the NLRB. Prior to his appointment he was a partner in the Chicago office of Morgan & Lewis. Member Miscimarra is a senior fellow at the University of Pennsylvania's Wharton Business School, where he is managing director of the Wharton Center for Human Resources Research Advisory Group. He was a co-author of *The NLRB and Managerial Discretion: Subcontracting, Relocations, Closings, Sales, Lay-offs, and Technological Change* (2d ed. 2010); *The NLRB and Secondary Boycotts* (3d ed. 2002); *Government Protection of Employees Involved in Mergers and Acquisitions* (1989 and 1997 supp.); and *Multinational Union Organizations in the White-Collar, Service, and Communications Industries* (1983).

Up-coming Meetings

-May 29-30, 2014, St. Catharines, Ontario, Canada. Inaugural Conference of the Canadian Association for Work and Labour Studies. The organizing committee welcomes proposals for single pa-

pers, multiple paper panels, roundtables and/or workshops. The conference will be held during the Congress of the Humanities and Social Sciences at Brock University. Registration fees: Permanent or full-time faculty – \$100, Union and community members – \$50. The full announcement can be found at: <http://cawls.ca/call-proposals-2014-cawls-inaugural-conference/>

-June 25-27, 2014, IX ISLSSL Asian Regional Congress, **Seoul**, Korea. (Date to be confirmed.) The tentative themes for this congress are: The Future of Trade Unions: Right to Strike in Danger? What are the limits of Labor Market Flexibility? Social Security Law in an Aging Society, and a round table on Migrant Workers and Multiculturalism in Asia.

-Sep. 17-19, 2014, 11th ISLSSL European Regional Congress – **Dublin**, Ireland. The conference themes include: 1) Labor Rights and Human Rights; 2) The Legal And Extra Legal Remedies Against Discrimination; 3) Alternative Dispute Resolution, Social Security Issues and 4) State Support for the Wage-Work Bargain, and Alternative Dispute Resolution. Scheduled roundtables (the core of the European conferences) will cover: Whistleblowing, Economic Crisis and Labor Law Reforms, Data Protection and Workplace Privacy, and Publishing Opportunities for Labor Law and Social Security Law Research.

Prof. **Matthew Finkin** is among the roundtable discussants, and be sure to note the last paragraph of Steve Befort's column on the first page where he alludes to the assurances he received regarding ample availability of appropriate libations.

-September 14-17, 2015, **Cape Town**, South Africa, XXI ISLSSL World Congress. The event will integrate the South African lawyers' association's annual meeting with the ISLSSL World Congress. Additionally, the ILERA World Congress is expected to take place back-to-back with the ISLSSL Congress and discussion has begun to harmonize the programs in the interest of encouraging the maximum number of participants at both events.

Cape Town was voted the world's number one tourist destination by Tripadvisor in 2011. It is located next to one of the world's seven natural wonders (Table Mountain) and two UNESCO world heritage sites (Robben Island and the Cape Floral Region).

Recent Publications

Carmelo Mesa-Lago, Distinguished Service Professor Emeritus of Economics, University of

Pittsburgh, recently published:

1) *Pensions in the Philippines: Challenges and Ways Forward*, co-author, Manila, Friedrich Ebert Stiftung, 2011. This is a study of the multiple public pension schemes in the Philippines, their evaluation based on key social security principles, and proposals for parametric reform.

2) *Re-Reforms of Privatized Pensions Systems* Munich, Zeitschrift für ausländisches und internationales Arbeits- und Sozialrecht, 2012. Carmelo was the editor and authored four chapters. The book analyzes structural reforms (privatization) in Argentina, Bolivia, Chile and Hungary, their advantages and flaws, and whether and how the latter have been corrected.

3) *Social Protection Systems in Latin America and the Caribbean: Cuba*. Published by the U. N. Economic Commission for Latin America and the Caribbean, Santiago de Chile, 2013. This project document includes data and analysis of employment and unemployment, wages, social insurance pensions, public health care and social assistance in Cuba in 1989-2011.

Additionally, earlier this year the International Society and the Max Planck Institute nominated Prof. Mesa-Lago for the prestigious Prince of Asturias (Spain) prize in Social Science.

Multinational Human Resource Management and the Law: Common Workplace Problems in Different Legal Environments by **Matthew W. Finkin** and Joel Cutcher-Gershenfeld with Takashi Araki, Andrew Stewart, Philipp Fischinger, Bernd Waas, and Roberto Fragale Filho (Edward Elgar Publishing Ltd.).

This previously noted book is now available. Using common factual scenarios, the authors examine how 5 legal systems (Australia, Brazil, Germany, Japan and the United States) deal with typical issues of employee voice (unionization and works councils), discrimination, privacy, wrongful dismissal, compensation and benefits administration, and global supply chain and labor standards.

Katherine Stone, "The Decline in the Standard Employment Contract: Evidence from Ten Advanced Industrial Countries".

This article is based upon materials in the *Appendix* to the book K. Stone & H. Arthurs, *After The Standard Contract Of Employment: Innovations For Regulatory Design* (Russell Sage Foun-

dation Press, 2013) that was noted in the May Bulletin.

Abstract from article: “There has been a great deal written about change in the nature of employment in advanced industrialized countries over the past two decades, but the economic data to substantiate this claim have been contradictory and/or ambiguous. Some analysts contend that the existing data show little or no change in job longevity or incidence of temporary work, thereby casting doubt on the claim that the standard contract of employment has eroded. This article examines the best available data from ten advanced industrial countries – Australia, Japan, United States, Spain, Italy, Germany, Netherlands, Denmark, United Kingdom and France. It looks at three of specific aspects of the standard employment contract: the growth of nonstandard employment, the decline in job tenure, and the decline in union density and collective bargaining coverage. Overall, the data reveal changes in national labor markets consistent with the thesis that there has been a decline in standard employment practices. In particular, they show an increase in many forms of nonstandard employment in Europe, Japan, and Australia. In the United States, the trajectory concerning nonstandard employment is less clearly demonstrated due to definitional issues that are discussed. Nonetheless, the U.S. data reveal a significant increase in nonstandard employment amongst mid-career and older workers. The data also show a marked pattern of decline in union density and collective bargaining coverage in all the countries studied.” Prof. Stone’s article is available at: papers.ssrn.com/sol3/papers.cfm?abstract_id=2181082

Tom Kohler gave a lecture in German at the University of Göttingen on ‘Union Rights in the United States’ which was repeated at the Law Faculty of the University of Jena. He also was an invitee at a conference on the Future of Comparative Law sponsored by the University of Florence law faculty and held in honor of Prof. Mary Ann Glendon. Additionally, he was an invited participant at a symposium in Honor of Dr. Thomas Klebe, sponsored by the Hugo-Sinzheimer-Institut in Frankfurt.

This year Prof. Kohler is hosting three visiting scholars, one each from the Universities of Tokyo, Passau (Germany), and Frankfurt.

The European Trade Union Institute, an EU sponsored project, recently published a study “Working in Multinationals and Domestic Firms Compared - Myths and Realities” by M. van Klaveren, K. Tijdens (AIAS, Amsterdam), and D. Gregory who compared wages, working conditions and job quality, working hours, training possibilities, and industrial relations at the workplace in multinationals and domestic companies. Their conclusions assert that, for some EU member states and sectors, working for an MNE results in higher wages, better promotion and training opportunities, and more unionized industrial relations. On the other hand, it also results in long and partly unpaid working hours, high stress levels and pressures of continuous re-organization.

Dispute Resolution in International Administrative Agencies **Arnold M. Zack**

Little attention is paid to how disputes are resolved within the hundreds of multinational agencies employing hundreds of thousands of employees administering international treaties and accords, funding development projects, policing world hot spots, and maintaining the free flow of international commerce.

The UN, the World Bank, Interpol, the WHO, the Black Seas Trade and Development Bank, and other organizations, all have employees entitled to legal protection of their workplace rights. But employees going to work for such agencies surrender their right to sue in their national courts. These agencies are created with privileges and immunities clauses in agreements with member states, protecting the Agencies from suit in member state national courts as well as the national courts in the countries where they may be working for the Agencies.

The international agencies accordingly develop separate sets of laws, or rules to accord workplace fairness for their staff members. And beyond that they have also developed dispute resolution procedures to channel and resolve employee complaints over violations of the agency’s rules or internal laws.

The universal approach requires the employee to protest an alleged violation up the usual chain of command to top management. If the Agency adheres to its position, they then provide a form of peer review where designated officials, usually half designated by the agency’s staff association and half designated by the Agency Director, seek

settlement or make recommendations for resolution that are submitted to the Agency head. In some cases, as in the IMF and EBRD, an outside arbitrator makes findings of fact and recommendations. In other cases, as in the IADB, the committee exercises a conciliation role, which may or may not achieve an alternative resolution. If the Agency head adheres to his or her original decision, the employee is entitled to appeal to an Administrative Tribunal. Some 20 to 30 Agencies maintain their own tribunals. Others use the Tribunals of the United Nations or the International Labor Organization.

Tribunals are composed of 3-7 members who meet once or twice a year to resolve internal appeals of employee disputes. Most decisions are based on paper appeals, although a few Tribunals, such as the African Development Bank, hold actual hearings. The United Nations has introduced a new system with regional judges (to date in Geneva, New York and Nairobi) who issue decisions which may be appealed to an Appeal Tribunal based in New York. The World Bank recently revised its procedures as well, placing much greater emphasis on mediation and negotiated resolutions. An increasing number of agencies also employ ombuds people.

International Labor Comparisons Program

For many years the Bureau of Labor Statistics published International Labor Comparisons (ILC) a compilation of comparative labor statistics for a large number of countries. ILC was eliminated by the budget "sequestration." cuts. However, the Conference Board, a global, independent research association recently announced it will maintain and update the ILC databases and make it available to the public free-of-charge on its website. The data can be seen at: <http://www.conference-board.org/ilcprogram/>

The Global Labour Relations Newsletter of the Baker & McKensie law firm in Issue No. 1, 2013, reports there is a trend in Argentina for managerial employees to organize unions to collectively represent their interests. The recent creation of a new mining union that represents non-unionized technicians and managerial employees in the sector is evidence of this new development. The Ministry of Planning registered the union last August. The new union says it will negotiate employment terms with a special emphasis on achieving salary increases

and better employment conditions. There are around 500,000 senior employees who are currently not unionized.

Other Notes

An interesting recent European Court of Justice case decision, *Sindacatul 'Pastorul Cel Bun' v. Romania*, ECHR 646 (2013) resolved issue of religious autonomy versus employee rights. In Romania, the government pays the salaries of clergy of state recognized religions and part of the wages of leaders and lay employees of such religious communities. This dispute arose after 32 priests and 3 lay workers in a region of south-western Romania formed a labor organization and sought to register it under Romanian law. The regional Archdiocese declined to consent to the organization and observed that under national law priests need the archbishop's written consent to take part in proceedings in the civil courts, even in connection with personal disputes. The Human Rights court upheld the challenged national court's injunction against registration of the labor organization. It emphasized the right of religious communities to react to any dissident movements emerging within them that might pose a threat to their cohesion, image or unity, and to control their own organizational arrangements. It further noted the lack of a European consensus on the issue of church-state separation and concluded that each nation has authority to decide whether to recognize unions that operate within religious communities.

It has been announced that there will be an impending re-launch of the ISLSSL European Seminar previously sponsored by the universities of Trieste, Szeged, Bordeaux and Lyon. The upcoming seminar is planned for July 2014 at the University of Cà Foscari of Venice under the direction of Prof. Adalberto Perulli.

The next ISLSSL Regional Congress of the Americas will be held in 2016. The affiliates of Mexico, Panama and Brazil have asked to host the Congress. A selection will be made by the International Society's Executive Committee at the Dublin meeting next September. Contact **Steve Befort** if you have any suggestions regarding our delegation's vote on that issue.